

DEQ Guidance Documents

Results of September 18, 2008, Brainstorming Session on the Needs of the Various Parties Prepared by Paul Zugger at the Request of the EAC October 7, 2008

(Note: The term “internal guidance” is used throughout to represent policy statements, guidance documents, op memos, etc. issued by the DEQ. Italics indicate common needs.)

Group I –Common Needs

	The DEQ Needs	The Regulated Community Needs	The Public Needs
1.	<i>DEQ decisions are based on appropriate interpretations of statutes and rules.</i>	<i>DEQ decisions are based on appropriate interpretations of statutes and rules.</i>	<i>DEQ decisions are based on appropriate interpretations of statutes and rules.</i>
2.	<i>Provide the regulated community with a clear understanding of its compliance responsibilities.</i>	<i>Have a clear understanding of its compliance responsibilities.</i>	<i>Have a clear understanding of what the DEQ is trying to accomplish through its various programs.</i>
3.	<p><i>DEQ is able to establish and use internal guidance in a manner that does not violate the Administrative Procedures Act. Internal guidance, in itself, is not enforceable. Only statutes, rules, and final actions of the DEQ (such as permits) are enforceable.</i></p> <p><i>(Clear statement in all guidance that this guidance reflects DEQ’s interpretation of specific statute/rule provision as applied to a given set of circumstances, does not have the force of law, and any determination based on this interpretation may be appealed under the APA.)</i></p>	<p><i>DEQ establishes and uses internal guidance in a manner that does not violate the Administrative Procedures Act. Internal guidance, in itself, is not enforceable. Only statutes, rules, and final actions of the DEQ (such as permits) are enforceable.</i></p> <p><i>(Clear statement in all guidance that this guidance reflects DEQ’s interpretation of specific statute/rule provision as applied to a given set of circumstances, does not have the force of law, and any determination based on this interpretation may be appealed under the APA.)</i></p>	<p><i>DEQ establishes and uses internal guidance in a manner that does not violate the Administrative Procedures Act. Internal guidance, in itself, is not enforceable. Only statutes, rules, and final actions of the DEQ (such as permits) are enforceable.</i></p> <p><i>(Clear statement in all guidance’s that this guidance reflects DEQ’s interpretation of specific statute/rule provision as applied to a given set of circumstances, does not have the force of law, and any determination based on this interpretation may be appealed under the APA.)</i></p>

4.	<u>Staff understands and applies internal guidance appropriately, and understands that decisions relying on internal guidance may be challenged by any party, both informally (through the management chain) and formally through an administrative appeal.</u>	<u>DEQ appropriately uses internal guidance, and any party affected by a DEQ decision relying on internal guidance has a clear avenue to appeal the decision, both informally (through the management chain) and formally through an administrative appeal.</u>	<u>DEQ appropriately uses internal guidance, and any party affected by a DEQ decision relying on internal guidance has a clear avenue to appeal the decision, both informally (through the management chain) and formally through an administrative appeal.</u>
5.	<i>Internal guidance is amended in a timely fashion and is kept current. As regulatory programs mature and understanding of regulations changes, interpretations as set forth in guidance need to be updated as well.</i>	<i>Internal guidance is amended in a timely fashion and is kept current. As regulatory programs mature and understanding of regulations changes, interpretations as set forth in guidance need to be updated as well.</i>	<i>Internal guidance is amended in a timely fashion and is kept current. As regulatory programs mature and understanding of regulations changes, interpretations as set forth in guidance need to be updated as well.</i>
6.	<u>Receives timely feedback from regulated community and the public on proposed new internal guidance and proposed changes to guidance.</u>	<u>Be provided adequate notice and opportunity to provide timely input to proposed new internal guidance and proposed changes to existing ones, including rebuttal and appeal opportunity if disagreements continue.</u>	<u>Be provided adequate notice and opportunity to provide timely input to proposed new guidance and proposed changes to existing ones, including rebuttal and appeal opportunity if disagreements continue.</u>
7.	<i>The DEQ has clear procedures on how programs are administered, the decision-making process, and lines of authority.</i>	<i>The DEQ has clear procedures on how programs are administered, the decision-making process, and the lines of authority.</i>	<i>The DEQ has clear procedures on how programs are administered, the decision-making process, and the lines of authority.</i>
8.	<u>Consistency in how a statute/rule is applied in a given situation. DEQ needs the ability to assure consistent interpretations of statutes and rules by DEQ staff throughout the state.</u>	<u>Consistency in how a statute/rule is applied in a given situation. To be treated fairly and consistently relative to other regulated parties in the state and other states.</u>	<u>Consistency in how a statute/rule is applied in a given situation.</u>
9.	<i>The DEQ administers the environmental programs in a way that both meets the requirements of law and assures MI is a business-friendly state.</i>	<i>The DEQ administers the environmental programs in a way that both meets the requirements of law and assures MI is a business-friendly state.</i>	<i>The DEQ administers environmental programs in a way that both meets the requirements of law and assures MI is a business-friendly state.</i>

10.	<i>Have the ability to take into consideration new evidence and scientific information in making a final decision.</i>	<i>Have the ability to take into consideration new evidence and scientific information in making a final decision.</i>	<i>Have the ability to take into consideration new evidence and scientific information in making a final decision.</i>
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Group II – Differing Needs

	The DEQ Needs	The Regulated Community Needs	The Public Needs
11.	Enabling legislation and rule-making authority to administer environmental programs for which it is held responsible.	The DEQ does not use rules or guidance to establish requirements that go beyond the intent of enabling legislation.	The DEQ has enforceable standards and rules.
12.	Able to use internal guidance to establish the agency's interpretation of a specific statute or rule requirement, with the expectation that staff is to apply this interpretation unless it is changed at the appropriate decision-making level.	Internal guidance should establish procedures to be followed, but not dictate the answer to a specific set of circumstances.	
13.	Ability to administer its programs in an effective and efficient manner	Programs are administered effectively and efficiently, but not through the improper use of internal guidance.	
14.	Meeting statutory and rule requirements, not cost, is the basis of decisions.	The least cost to get the job done should be an important consideration.	The overall value to society is considered as an important outcome of any decision.
15.	Decisions need to be based on studied and consistent interpretation of specific provisions of statutes and rules, and cannot be based solely on the goal/endpoint of the statute.	Complex internal guidance, established for the ease of program administration and consistency, should not get in the way of accomplishing the goal/endpoint of the statute.	

16.	Not be locked into a preliminary decision that is no longer consistent with its interpretation of statute and rule requirements.	DEQ does not back track. Make final decisions and move on.	
17.	<i>DEQ has the ability to be responsive to unique situations and the ability to change, <u>consistent with its interpretation of statute and rule requirements.</u></i>	<i>DEQ has the ability to be responsive to unique situations and to change, consistent with mandates of statutes and rules <u>and is not bound by internal guidance.</u></i>	
18.	<i>Optimize environmental benefit for the cost incurred <u>consistent with its interpretation of statute and rule requirements.</u></i>	<i>Optimize environmental benefit for the cost incurred consistent with statute and rule requirements, <u>and not be bound by internal guidance.</u></i>	
19.	The DEQ decisions are based on the <u>acceptable level of risk to the environment and public health as set forth in statute and rules</u>	The DEQ decisions should be based on the <u>actual risk</u> to the environment and public health.	Confidence that the DEQ is administering environmental protection programs in a manner that will protect the environment and public health.
20.	<i>Maximize discretion and flexibility at the staff level, while still assuring appropriate level of state-wide consistency with the <u>DEQ's interpretation of specific statute/rule provisions.</u></i>	<i>Maximize discretion and flexibility at the staff level, consistent with statute and rules, but not be bound by interpretation of <u>specific statute/rule provisions as set forth in internal guidance.</u></i>	
21.	Ability to carry out its regulatory responsibilities through necessary and appropriate <u>interpretation</u> of laws and rules.	Not apply internal guidance in a regulatory manner or as enforceable rules.	Ability to carry out its regulatory responsibilities through necessary and appropriate enforcement of laws and rules